

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RITA WEBER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 219,365
<b>BEVERLY REHAB SERVICES and</b>	)	
<b>CHRISTOPHER MANOR</b>	)	
Respondents	)	
AND	)	
	)	
<b>INSURANCE CO. STATE OF PENNSYLVANIA</b>	)	
<b>and PHICO INSURANCE COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

The respondent, Beverly Rehab Services, and its insurance carrier, Insurance Co. State of Pennsylvania, appealed the preliminary hearing Order entered by Administrative Law Judge John D. Clark on December 2, 1997.

**ISSUES**

The Administrative Law Judge granted claimant's request for medical treatment with Paul S. Stein, M.D. The respondent and its insurance carrier raised the following issues for review by the Appeals Board:

- (1) Whether claimant met with personal injury by accident that arose out of and in the course of her employment with the respondent.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in granting claimant's request for medical treatment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant's accidental injury arose out of and in the course of her employment with the respondent is a jurisdictional issue listed in K.S.A. 44-534a, as amended, that grants the Appeals Board authority to review a preliminary hearing order.

(1) This is the third preliminary hearing held and the third preliminary hearing Order entered in this case. The first preliminary hearing Order dated February 20, 1997, granted claimant's request for temporary total disability compensation and authorized medical treatment with Philip R. Mills, M.D. The Administrative Law Judge ordered those preliminary benefits to be provided by respondent Beverly Rehab Services and its insurance carrier for a date of accident from October 14, 1996, through October 29, 1996. That preliminary hearing Order was appealed to the Appeals Board and in an Order dated April 24, 1997, the Appeals Board affirmed the Administrative Law Judge.

At the request of the claimant, another preliminary hearing was held on July 29, 1997. At that time, the claimant requested further temporary total disability benefits and authorization from the Administrative Law Judge for Paul S. Stein, M.D., to proceed with an MRI. The Administrative Law Judge granted claimant's requests in an Order dated July 29, 1997. No appeal was taken from that Order.

Claimant filed the Application for Preliminary Hearing that is the subject of this appeal on September 25, 1997. Claimant requested additional medical treatment with a change in the treating physician from Dr. Mills to Dr. Stein. No new testimony was offered at the preliminary hearing held on December 2, 1997. The transcript contains the arguments of the parties and a medical report from Dr. Mills dated October 14, 1997, and medical notes of Dr. Stein dated September 8, October 10, and October 29, 1997. During the arguments of the parties, the respondent, Beverly Rehab Services, through its insurance carrier, Insurance Co. State of Pennsylvania, again raised the question of whether claimant's accidental injury arose out of and in the course of her employment with respondent Beverly Rehab Services on October 29, 1996, or did it arise out of an accident that occurred on February 11, 1996, while claimant was employed by the respondent, Christopher Manor.

The respondent, Beverly Rehab Services, argues that the medical reports admitted into evidence at the December 2, 1997, preliminary hearing are persuasive and prove claimant's present need for medical treatment is the result of her February 11, 1996, injury and not the October 29, 1996, injury. Dr. Mills' report dated October 14, 1997, diagnosed a herniated disc and attributed the herniation to claimant's February 11, 1996, accident. However, Dr. Mills' medical report dated April 29, 1997, admitted into evidence at the July 29, 1997, preliminary hearing, diagnosed claimant's condition as myofascial pain syndrome causally related to the February 11, 1996, accident with other exacerbations. Dr. Stein's medical note dated September 8, 1997, also diagnosed a disc herniation as shown by the MRI examination. Dr. Stein's medical note of October 10, 1997, attributes

claimant's current problems to the February 11, 1996, accident but with no history of an additional injury.

The Administrative Law Judge ordered all preliminary benefits to be paid by the respondent, Beverly Rehab Services, and its insurance carrier, Insurance Co. State of Pennsylvania. Therefore, the Administrative Law Judge was not convinced by the new medical evidence that claimant's current need for medical treatment was the result of her February 11, 1996, injury. The Appeals Board finds when the complete record of all three preliminary hearings are examined that the preliminary hearing Order of the Administrative Law Judge should be affirmed. This conclusion is mainly supported by claimant's testimony at the first preliminary hearing which indicated that claimant, following her February 11, 1996, injury that occurred while she was employed by Christopher Manor and subsequent medical treatment, had only occasional discomfort until she returned to work for respondent Beverly Rehab Services on October 14, 1996. Claimant then testified her heavy lifting activities at work caused pain, numbness in her arms and hands, and headaches. The claimant, as noted in Dr. Stein's medical report of September 8, 1997, continues to have pain in those same areas as she did following the heavy lifting activities that she had to perform for the respondent, Beverly Rehab Services.

(2) The respondent and its insurance carrier also question the Administrative Law Judge's authority to order medical treatment for claimant's October 29, 1996, work-related injury. The Appeals Board has found on numerous other occasions that the preliminary hearing statute, K.S.A. 44-534a, as amended, authorizes the Administrative Law Judge, pending a full hearing on the claim, the discretion to make a preliminary hearing award of medical compensation. Therefore, the Administrative Law Judge did not exceed his jurisdiction and the Appeals Board does not have jurisdiction to review this issue at this juncture of the proceeding.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated December 2, 1997, entered by Administrative Law Judge John D. Clark should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1998.

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS  
Stephen P. Doherty, Wichita, KS  
Scott J. Mann, Hutchinson, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director